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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JESUS REYNOSO, Defendant and Appellant.	B202376 (Los Angeles County Super. Ct. No. LA055508)

APPEAL from a judgment of the Superior Court of Los Angeles County, Susan M. Speer, Judge. Affirmed.

Cynthia L. Barnes, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Lawrence M. Daniels and Eric E. Reynolds, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant, Jesus Reynoso, appeals the judgment entered following his conviction, by jury trial, for grand theft auto, identity theft, receiving stolen property, and altering a license plate, with prior prison term enhancements (Pen. Code, §§ 487, subd. (d)(1), 530.5, subd. (c)(3), 496, 667.5; Veh. Code, § 4463).[1] Reynoso was sentenced to state prison for a term of seven years.

The judgment is affirmed.

BACKGROUND

Viewed in accordance with the usual rule of appellate review (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), we find the evidence established the following.

On April 11, 2007, Maria Bautista awoke to find her 1993 white Honda Accord missing. When she reported it stolen, she informed the authorities her car was equipped with a Lo-Jack antitheft system.

The following day, Officer Jared Cutler of the Burbank Police Department was on patrol in a car equipped with a Lo-Jack targeting system. The system alerted to a stolen car, which Cutler traced to 1044 Naomi Street. When he arrived there, Cutler saw a white Honda Accord parked in the driveway. The Honda had a rear license plate, but no front plate. A computer check showed the license plate was registered to a white Honda Accord, but there was no indication the car had been stolen.

Cutler saw defendant Reynoso leave the house at 1044 Naomi St. Reynoso got into a pickup truck, which was parked in the driveway behind the Honda, and drove off. Cutler made a traffic stop. Reynoso said he lived at the house with his girlfriend. Reynoso was arrested and put into the back of Cutler's patrol car. Later, Cutler saw Reynoso fumbling with something while he was sitting handcuffed in the patrol car. It turned out Reynoso was holding a cell phone. Cutler took the phone and saw a text message on the screen. The message read: "Hey, mijo, you need to get the car out of

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[1] All further statutory references are to the Penal Code unless otherwise specified.

here. The landlord knows it's hot. She said before the cops come, mijo. Please call A.S.A.P. so I can let you know, please."

In the meantime, Jennifer Santana had arrived at 1044 Naomi St. driving another white 1993 Honda Accord. The rear license plate on Santana's car was the same as the rear license plate on the Honda parked in the driveway. Santana was arrested and put into the patrol car with Reynoso, where the two of them "began making out." Reynoso told officers Santana was his girlfriend.

Los Angeles Police Officer Brian Murphy arrived at the scene to inspect the stolen Honda. The car's vehicle identification number did not match its license plate, which belonged to Santana's Honda. The other Honda was Bautista's stolen car.

The house at 1044 Naomi was searched. Officers found the registration for Bautista's Honda as well as her insurance card. They found several stereos which appeared to have been removed from cars. They found a set of filed-down and snapped-off keys. Murphy testified filed keys are used to steal cars, especially Hondas and Toyotas. The broken keys indicated they had been inserted into the wrong type of ignition and then snapped off.

Officers also found mail, checks, credit cards, identification cards and drivers licenses belonging to at least 13 different people. There were checks floating in a check-washing solution meant to dissolve the ink so a check could be rewritten and illegally passed. Many of the stolen identification documents were found in an organizer which also contained Reynoso's business cards, medical card and Costco membership card.

Two of the recovered checks belonged to Edith Bane, who testified she had written three checks on March 17, 2007, and put them into her mail box for pickup. Bane went out shopping and, when she returned home, she noticed the envelopes were gone. When she heard the mail carrier deliver her mail later that day, she realized the check envelopes had been stolen. Bane's bank subsequently received one of the checks; the payee's name had been altered.

Reynoso did not present any evidence.

CONTENTIONS

1. The trial court erred by giving the jury an aiding and abetting instruction in connection with the charges of altering a license plate and possessing personal identifying information.

2. There was insufficient evidence to sustain the convictions for altering a license plate and grand theft auto.

3. The trial court erred by failing to properly apply the prohibition against multiple punishment (§ 654) to Reynoso's convictions for grand theft auto and receiving stolen property.

DISCUSSION

1. *Trial court did not err by giving aiding and abetting instruction.*

Reynoso contends the trial court erred by instructing the jury on an aiding and abetting theory in connection with the charged crimes of altering a license plate and possessing personal identifying information. This claim is meritless.

Vehicle Code section 4463, subdivision (a)(1), prohibits a person who, "with fraudulent intent displays or causes or permits to be displayed or have in his or her possession a blank, incomplete, canceled, suspended, revoked, altered, forged, counterfeit, or false . . . license plate . . . ." Section 530.5, subdivision (c)(3), provides that "[e]very person who, with the intent to defraud, acquires or retains possession of the personal identifying information, as defined in subdivision (b) of Section 530.55, of 10 or more other persons is guilty of a public offense . . . ."

Citing *People v. Perez* (2005) 35 Cal.4th 1219, Reynoso argues, "Both statutes require that a defendant act with the intent to defraud. [Citation.] Under *Perez*, this language means that these crimes cannot be aided or abetted and require that a defendant personally participate in their commission." Reynoso's reliance on *Perez* is misplaced.

Perez had been charged with possessing hydriodic acid precursors with intent to manufacture methamphetamine, in violation of former Health and Safety Code section 11383, subdivision (c)(2). The question on appeal was whether "possession of hydriodic acid precursors *with the intent that someone else use them to manufacture methamphetamine* [is] criminal, under either an accomplice or direct liability theory[.]" (*People v. Perez, supra*, 35 Cal.4th at p. 1225, italics added.) Perez was arrested driving a car that contained precursor chemicals for making methamphetamine. He admitted the chemicals belonged to him; he said he had bought them for $350 and was planning to sell them to a man named Antonio for $400. Perez knew the chemicals were used in the manufacture of methamphetamine. Our Supreme Court held the trial court should not have given an aiding and abetting instruction: "Whether the theory was that Perez intended to aid and abet Antonio's actual manufacture of methamphetamine (§ 11379.6, subd. (a)) or to aid and abet Antonio's possession of hydriodic acid precursors with the intent to manufacture methamphetamine ([former] § 11383(c)(2)), no evidence established that Antonio ever violated, or attempted to violate, either statute. Without proof of a criminal act by Antonio to which Perez contributed, the prosecution could not convict Perez as an aider and abettor." (*Id*. at p. 1227.)

As the Attorney General points out, *Perez* did not hold the predicate crimes could not be committed by aiding and abetting, but only that "for a defendant to be found guilty under an aiding and abetting theory, someone other than the defendant must be proven to have attempted or committed a crime . . . ." (*People v. Perez, supra,* 35 Cal.4th at p. 1225.) That element was missing in *Perez,* but not here. We agree with the Attorney General that, "[a]s to the altering of a license plate and identity theft charges, there was definitive proof that someone committed the crimes. The license plate found on the stolen Honda clearly came from [Santana's] Honda. Someone had to remove the valid license plates from the stolen Honda and replace the rear plate with the front plate of [Santana's] Honda. Officer Murphy testified that in his expert opinion, this was done to conceal the fact that the car was stolen. Likewise, the credit cards, checks, mail, and identification cards recovered from appellant's residence were stolen. Unlike *Perez*,

where there was no evidence of anyone committing a crime, here there was overwhelming evidence that someone committed the crimes of altering a license plate and identity theft. Thus, the trial court properly instructed the jury on aider and abettor liability."

The aiding and abetting instruction was not erroneous.

2. *Sufficient evidence sustained the convictions for grand theft auto and altering a license plate.*

Reynoso contends "substantial evidence did not show that [he] participated in any way in the theft of the Honda or in switching the license plates on [the] cars." This claim is meritless.

"In assessing a claim of insufficiency of evidence, the reviewing court's task is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence – that is, evidence that is reasonable, credible, and of solid value – such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The federal standard of review is to the same effect: Under principles of federal due process, review for sufficiency of evidence entails not the determination whether the reviewing court itself believes the evidence at trial establishes guilt beyond a reasonable doubt, but, instead, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. [Citation.] The standard of review is the same in cases in which the prosecution relies mainly on circumstantial evidence. [Citation.] ' "Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the jury, not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt. ' "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment." ' [Citations.]" ' [Citation.]" (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

"Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]" (*People v. Jones* (1990) 51 Cal.3d 294, 314.)

There was ample evidence to support Reynoso's convictions for grand theft auto and altering a license plate.

The jury was instructed on possession of recently stolen property. "Possession of recently stolen property is so incriminating that to warrant conviction there need only be, in addition to possession, slight corroboration in the form of statements or conduct of the defendant tending to show his guilt. [Citations.] This court stated in *People v. Lyons*, 50 Cal.2d 245, 258 [disapproved on other grounds in *People v. Green* (1980) 27 Cal.3d 1, 32], '[P]ossession of stolen property, accompanied by no explanation, or an unsatisfactory explanation of the possession, or by suspicious circumstances, will justify an inference that the goods were received with knowledge that they had been stolen. The rule is generally applied where the accused is found in possession of the articles soon after they were stolen.'. . . In *People v. Citrino, supra*, 46 Cal.2d 284, 288-289, after pointing out that corroboration need only be slight and may be furnished by conduct of the defendant tending to show his guilt, we said, '. . . the failure to show that possession was honestly obtained is itself a strong circumstance tending to show the possessor's guilt of the burglary.' " (*People v. McFarland* (1962) 58 Cal.2d 748, 754.) "Our Supreme Court has indicated that the slight corroboration that permits an inference that the possessor knew that the property was stolen may consist of no explanation, of an unsatisfactory explanation, or of other suspicious circumstances that would justify the inference. [Citation.]" (*People v. O'Dell* (2007) 153 Cal.App.4th 1569, 1575.)

The stolen Honda was in Reynoso's driveway. Inside his house, police found the stolen car's registration papers and the owner's insurance card. Police also found filed keys, which are often used to steal Hondas. Reynoso received a text message on his cell phone warning that he needed to move the stolen car before the police arrived. The substituted license plate on the stolen car had come from Reynoso's girlfriend. The jury reasonably concluded Reynoso stole Bautista's Honda and used his girlfriend's license plate to try to disguise the theft.

There was sufficient evidence to sustain the convictions.

3. *Proscription against multiple punishment was properly applied*.

Reynoso contends the trial court erred by failing to apply the rule against multiple punishment (§ 654) to his convictions for grand theft auto and receiving stolen property. This claim is meritless.

Reynoso argues he "was convicted of grant theft of Maria Bautista's 1993 Honda (count 2) and of receiving stolen property, to wit, the vehicle registration and paperwork which was inside that same vehicle (count 4) at the time it was stolen. [Hence], appellant was separately punished for both offenses based upon the same act and course of conduct."

Not so. As the Attorney General correctly points out, at sentencing the trial court *stayed* the sentence on count 4. This was the proper way to prevent improper multiple punishment: " 'Section 954 generally permits multiple conviction. Section 654 is its counterpart concerning punishment. It prohibits multiple punishment for the same "act or omission." When section 954 permits multiple conviction, but section 654 prohibits multiple punishment, the trial court must stay execution of sentence on the convictions for which multiple punishment is prohibited. [Citations.]' " (*People v. Sloan* (2007) 42 Cal.4th 110, 116.)

DISPOSITION

The judgment is affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.